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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/701,478 | 02/01/2001 | Luther Stoddard | 17427-US | 1172 |

7590 03/30/2004

Gerald G Crutsinger
Crutsinger & Booth
Suite 1000
1601 Elm Street
Dallas, TX 75201-4744

EXAMINER

KIM, EUGENE LEE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,478

Applicant(s)

STODDARD ET AL.

Examiner

Eugene L Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1, 4-10, 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. Claims 1, 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (CA 2064270) in view of Andersson et al (#5,155,799).

Davis substantially shows the claimed method and apparatus including flattening a neck portion, gathering the flattened portion and attaching a reusable closure 25 to the neck.

Davis also shows belt means 15, brush means 13 and perforating means as claimed.

Figure 2 shows the sealing means 17 and gripping means 15 to grip the end while sealing. Davis shows gripping the bag with gripping means 15 while the bag is sealed and perforated. Davis shows heating means 17 to seal the web but does not show the hot air means as claimed. Andersson et al teach the concept of sealing webs using heated air means. Andersson et al disclose that hot air has advantages with regard to rapid and concentrated heating (col 2 lines 8+). The heated air is disclosed as having a temperature range between 300 and 500 degrees Celsius. Andersson et al also discloses that the hot air is distributed to two nozzle jets 7. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Davis with hot air means as taught by Andersson et al to provide the advantages with rapid and concentrating heating means. Regarding the location of parts, such as, the location of air dispensers, the examiner notes that little patentable weight is given to the location of parts unless there is some criticality or unexpected result from the location. See in re Japikse, 86 USPQ 70 (CCPA 1950).

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Regarding the temperature as claimed, Andersson et al show a temperature range as discussed supra. Optimum ranges via experimentation are known and little patentable weight is given unless the particular range imparts new and unexpected result, which are different in kind, and not merely degree. See in re Dreyfus, 22 CCPA (Patents) 830, 73 F.2d 9312 , in re Waite et al, 35 CCPA (Patents) 1117, 168 F.2d 104.

2. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis

Davis shows a product tampering sealed bags that enclose bakery products (p. 3 lines 5+), with a reclosable bag with a row of perforations forming a tamper evident tear of strip. Davis discloses that the reclosable closure member may be wire, tape, plastic clip etc... (p. 8 lines 3+). Regarding the ink on the neck, Davis shows a bag code pressed in the neck rather than including anything in than including anything in the printing inks, etc.. The examiner reads this claim in a the way of printing inks etc (p. 7 5th paragraph) in a broad context. The ink is claimed as it may be softened by heat which is a capability type limitation. Davis discloses that printing inks are known but rather uses a pressed bag code to provide information or identity to the bag. It would have been obvious to one of ordinary skill in the art to use ink which is a mechanical equivalent to the bar code of Davis since ink does not solve any stated problem.

Furthermore, applicant concedes that it is known to provide bakery products with printed bags in p. 9 5th paragraph of the remarks on 12/17/2002. The examiner also notes that it is well known in the art to heat inks to imprint on material webs as claimed.

3. Claim 11 is allowed.

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4. Applicant's arguments filed 3/12/2004 have been fully considered but they are not persuasive.

In response to applicants arguments regarding the location of where the heating means apply, the examiner notes that Andersson et al disclose that it is known to restrict the heating to a defined region that may be readily regulated (col 1 lines 30+). The actual location of where the heat is applied is a matter of where the user wants to create a seal/bond to close the bag.

In response to the perforated neck, Davis does show a seal line that is adjacent and spaced from a row or perforations. The secondary reference is being used to show an alternative mechanism to form the seal lines. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to provide Davis with heat sealing means as taught by Andersson et al to create a heat seal in a defined region that may be readily regulated.

In response to applicants argument regarding claim 4 and claim 12, the examiner reads these claim in a broad context as discussed supra. The ink is claimed as "may be softened by heat" which is a capability type limitation.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene L Kim whose telephone number is 703 308-1886. The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eugene L Kim
Primary Examiner
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